

Being, therefore, satisfied that the purchaser or his agent knew of this incumbrance, and that the property was sold subject to it, I am of opinion that the complainant's exception to the credit which the Auditor has given the purchaser for it is well taken, and the cause must therefore go back to the Auditor to correct the accounts accordingly.

GRAFTON L. DULANY, for Complainant.

CHARLES F. MAYER, for the purchaser, McClellan.

[An appeal was taken by McClellan, which is still pending.]

GEORGE H. STEWART,
vs.
HARRIET BEARD ET AL.

} MARCH TERM, 1852.

[CHANCERY PRACTICE.]

THOUGH it may be competent to vacate upon petition the enrolment of a decree alleged to have been obtained by surprise, yet the general law of the Court is the other way, that a decree after enrolment cannot be reheard upon petition; the remedy is by bill of review.

An order ratifying the Auditor's account, distributing the proceeds of sale under a creditor's bill, cannot be vacated by petition after enrolment, on the ground that the petitioning creditor was not aware that there would be a surplus, after paying the preferred claim of the complainant.

[The bill in this case was a creditor's bill, for the sale of the real estate of John Beard, who died intestate. The decree was passed, the land sold, and the Auditor's account distributing the proceeds ratified, when John D. Meekins, a judgment creditor of said Beard, filed his petition for the vacating of the order of ratification, under circumstances stated in the following opinion of the Chancellor.]

THE CHANCELLOR:

The object of the petition filed in this case, by John D.